IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.617 OF 2002

Lalkari Keshav Rajbhar]
Convict No.C.12474,]
Age 40 years,]
At present lodge in]
Yerawada Central Prison] Petitioner
Pune - 411006](Org.Accd.No.2)
versus
The State of Maharashtra] Respondent.

WITH

CRIMINAL APPEAL NO.362 OF 2005

WITH

CRIMINAL APPLICATION NO.2244 OF 2005

Sau Geeta Lalkari Rajbhar]
Age 35 years]
At present lodged in]
Yerawada Central Prison] Petitioner
Pune 411006])Org.Accd.No.1)
versus

The State of Maharashtra : Respondent.

Smt.Ruchita Dhuru, Advocate appointed, for the petitioners.
Mrs.G.P.Mulekar, Addl.P.P.for the respondent.

CORAM : D.G.DESHPANDE
SMT.R.S.DALVI, JJ.
DATED : NOVEMBER 24, 2006.

COMMON JUDGMENT :- [PER D.G.DESHPANDE,J]

1. The wife/accused No.1 filed Civil Application No.2244 of 2005 for condonation of delay in filing her Criminal Appeal No.362 of 2005. The appeal is filed through jail. Therefore, delay is condoned. Application No.2244 of 2005 is disposed of. Appeal No.362 of 2005 is taken up for final hearing along with Criminal Appeal No.617 of 2002 filed by husband - accused No.2.

2. Heard Smt.Ruchita Dhuru for the petitioners/accused. She was appointed by us to represent both the accused as both the appeals are filed through jail. We also heard learned

Additional Public Prosecutor.

3. Both the accused have challenged by these appeals their conviction under section 302 of the Indian Penal Code awarded by the II Addl.Sessions Judge, Thane. The accused, who are the husband and wife, were charged for double murder.

4. The prosecution case in that regard, in brief, is as under :-

. The accused had a daughter by name Sunita. She was about 15 years of age being the eldest daughter and was studying in 3rd Hindi Standard in 1999. She was kidnapped and, therefore, her father i.e. accused No.2 lodged a missing complaint on 19/2/1999. According to the prosecution, Raju, the deceased, had kidnapped Sunita as they were in love and thereafter they married. This was not at all like by any of the accused. The accused felt that this marriage had defamed their family and both the accused were angry and disturbed.

5. Deceased Raju was residing in the same

village. The accused, therefore, invited him for dinner on the night of 7/2/2000. Deceased Raju told his friends and others that his father-in-law has invited him for dinner along with his uncle. Then accordingly both deceased Raju and his uncle went to the house of the accused for dinner on 7/2/2000. But thereafter both of them were not seen by anybody. On the night of 7/2/2000 some women, while passing by the side of the house of accused i.e. the flour mill, heard the screaming and voice calling for help. Therefore, they gave a call to accused No.1, but she did not respond. Then those ladies contacted a nearby pan shop owner. He also gave a call to both the accused but in vain. This was repeated after some time, then accused No.1 responded and told that her husband was under drunken condition and was behaving abnormally, but there was nothing unusual.

6. Further as per the prosecution case, there was a rumour in the village that Raju and his uncle were murdered. The police patil also heard this rumour. He went to the house of accused. She was in the flour mill. The police patil told her about the rumour and expressed his

desire to search the house of accused. Accused No.1 initially hesitated but allowed him to search. The police patil experienced obnoxious smell. He found one dead body in a iron box, that is a trunk and, another dead body in a steel water tank. Those two dead bodies were of Raju and his uncle. Thereafter a complaint to the police was lodged, offence was registered, investigation was started, charge sheet was filed and the accused came to be convicted by the Sessions Judge as stated above. The charges were framed. The defence of the accused was of total denial and false implication. The prosecution examined as many as 16 witnesses. The trial court believed the prosecution case and convicted the accused for the offences under Section 302 read with section 34 and under section 201 read with 34 of the Indian Penal Code and, sentenced them to suffer rigorous imprisonment for life and R.I. for seven years with fine and in default sentence respectively. Hence these two appeals.

7. The learned advocate for the accused/appellants contended that this is not a case of direct evidence and there is no witness with the prosecution to testify about the murders

and, since this was a case merely based on circumstantial evidence, according to her, the circumstances, brought on record, were not sufficient to lead to the conclusion of the guilt of accused alone and nothing else. She relied upon a judgment of the Supreme Court in the case of **Shankarlal Gyarasilal Dixit v/s. State of Maharashtra** reported in **1981 SCC (Cri) 315.** She also critisized the evidence of the prosecution about the recovery and discovery and, contended that the witnesses were having political animus against the accused and, therefore, the accused were falsely implicated. She also contended that there was no evidence of last seen together which is an important link in a case based on circumstantial evidence.

8. On the other hand, the learned Addl.Public Prosecutor contended that the prosecution has succeeded in proving strong motive of accused to eliminate Raju, as Raju had kidnapped their daughter Sunita and married her against their desire. She also contended that the fact that Raju and his uncle were invited by the accused for dinner on 7/2/2000 was amply proved by the prosecution witnesses. The story

of the prosecution that some ladies, who were passing by the road adjoining to the house or flour mill of the accused, heard the voice for help from the house of the accused, was proved beyond reasonable doubt. Thereafter recovery of the two dead bodies of Raju and his uncle from the house of accused was most important link proved by the prosecution. The FIR was immediately lodged. The police patil had no grudge against the accused to falsely implicate them and, the subsequent recovery and discovery proved the case of the prosecution beyond reasonable doubt. Therefore, according to her, this is not a case where interference is required for.

9. There is no much dispute about the fact that Raju and his uncle were died as a result of homicidal death. The prosecution has examined P.W.1 - Dr.Bhivanand Baviskar who conducted post mortem of Raju and his uncle Pappu Raut. So far as Raju is concerned, the doctor found that second and third trachea rib were fractured and right horn of hyoid bone was fractured. These were ante-mortem injuries and the cause of death was cardio respiratory failure due to asphyxia

due to external violent pressure over throat. The body was decomposed. As the stomach was empty, the doctor opined that Raju died 6 to 8 hours of his last meal. Accordingly the doctor prepared the post mortem notes and he proved the post mortem notes at Exhibit 12.

10. Similarly about the uncle of Raju deceased Pappu, the cause of death was same i.e. cardio respiratory failure due to asphyxia due to external violent pressure over throat. That body was also decomposed. Here also the doctor noticed fracture to second and third ribs. These were antemortem injuries. The doctor proved the post mortem notes at Exhibit 13.

11. Nothing much was argued about this opinion of the doctor by the advocate for the accused. The doctor denied the suggestions that if with the hands violence is used for throttling, there would be marks of hands on the throat. Before the trial court also there was no serious dispute about homicidal death of both of these Raju and his uncle Pappu. Therefore, it has to be held that the prosecution has succeeded in proving that both Raju and his uncle Pappu

died as a result of homicidal death.

12. One important witness of the prosecution is P.W.10 - Mainuddin Ramjani. He has stated that he was knowing both the accused as they were running a flour mill. He was knowing deceased Raju and his uncle. He has stated that on 7/2/2000 he was in his house at 8 p.m. Raju informed him that accused No.1 had called him for dinner on 7/2/2000. This wintess also identified the photographs marked as U-1 and U-2. He has also stated that he was knowing Raju because Raju had worked with him in a power-loom at Bhiwandi. He also stated that Raju left him after informing him about this invitation.

13. Initially advocate for the accused declined to cross examine this witness but the witness was recalled and cross examined. In the cross examination this witness (PW 10) stated that he had not informed the police that Raju had informed him about the invitation given by accused No.1. The advocate for the accused, therefore, contended that this was an improvement made by the witness and since this improvement is material and its amounting to the contradictions,

it should be disregarded.

14. Next witness on the similar point is P.W.12 - Jeevaj Thakur. He has stated that he had a hair cutting saloon at Katai baug area and, that the accused were running a flour mill near Katai village i.e. on a road leading to the village where the flour mill of the accused was situated. He has stated that he was knowing Raju because Raju was his customer and that on 7/2/2000 there was load shading. Raju came to his shop in the evening and informed him that he had been invited for dinner by his in-laws in their house and, since he was to go there, he requested this witness to cut the hair. There is absolutely nothing in the four questions put in the cross examination on behalf of the accused. The suggestion that the witness is deposing falsely is denied.

15. There is one more witness (panwalla) examined by the prosecution as P.W.11 - Sitaram Pandit. He has stated that he had a pan shop in the area known as Khadipar Khatai village and he was knowing the accused. They were residing at Khatai and running a flour mill. He used to open

his pan shop at 5 a.m. and close it at 12 mid-night. Thereafter he has stated that on 8/2/2000 when he had been to his shop, there were no lights and at that time some ladies, to whom he was referred as Bhabies, came to him and informed that they had heard the voice calling for help as Bachav Bachav from the house accused and that they had called the accused but they were not responding.

. Thereafter this witness Pandit has stated that he went to the house of accused and gave a call to both of them but there was no response from the accused. But again 5 to 6 ladies came and they gave call repeatedly, upon which accused No.1 had responded and told that her husband had drunk and behaving improperly and, therefore he was tied and raising hue and cry. Then this witness went to his shop. He identified the photographs of house of the accused and that of his pan shop. He also identified other photographs of dead bodies in the iron box as well as in the tank as T-1 to T-3. He has stated that he was knowing Raju by his name. Raju had love affairs with the daughter of the accused.

16. In the cross examination, as has happened with the other witnesses, nothing fruitful is brought out at all. To the contrary, in the cross examination, this witness Pandit (PW 11) stated that it did happen that initially he had knocked the door of accused in the morning as well as number of persons knocked the door but nobody opened it. A suggestion was given to him that he is deposing falsely about the statement made by accused No.1 that her husband (accused No.2) was in drunk condition.

17. Therefore, the evidence of this witness clearly shows that some ladies heard the voice Bachav Bachav coming from the house of accused. Initially those ladies gave call but there was no response and, this witness (PW 11) gave calls and ultimately accused No.1 opened the door and told false story of the accused No.2 the husband being tied-up because of his drunk condition. Therefore, the evidence of this witness proves that deceased Raju or his uncle Pappu had called or shouted Bachav Bachav at about 12 midnight.

18. The evidence of police patil Namdeo Patil (PW-2) in this background assumes great

importance. He has stated that on 9/2/200 in the evening, he had returned to the village. He learnt that the murder had taken place in the house of accused. Therefore, he informed accused No.1, to whom he was referred as Bhabi, that he intended to take search of her house. She, however, avoided. But this witness opened the door of the flour mill-cum-residential house of the accused and experienced obnoxious smell. Then while searching he found a dead body of a male person kept in an iron box in the loft. He also noticed another dead body on the loft which was in a steel tank. At that time accused No.2 was not in the house. The daughter of the accused was also in the house, who had married or gone away with deceased Raju. This witness then brought accused No.1 from the loft to the ground, required her to lock and close the flour mill and then took her to the police station. Then he lodged the complaint (Exhibit 15).

19. In the cross examination this witness (PW-2) has stated that he had not seen the daughter of the accused nor the person with whom she had ran away. He denied the suggestion that electric meter of the flour mill of the accused

was stolen and accused suspected that the theft was committed by the son of this witness. Similar suggestion about the theft of water tank of the accused by the son of the witness was denied. In the cross examination, he has stated that he was on the loft for about 10 minutes, he came back with the police at about 8.30 p.m. and he was there with the police till mid-night. He denied the suggestion that Article Nos. 1 and 2 were removed from the loft after breaking the wall. He also denied the suggestion that the dead bodies were not found in the house.

20. This witness is most important witness. He acted diligently as police patil. He had taken lead in finding of the dead bodies in the house of the accused and had taken accused No.1 to the police station and then lodged the report (Exhibit 15). Suggestions given to him in the cross examination about enmity were also denied by him and apart from those suggestions, there is absolutely nothing to doubt or suspect the evidence of this witness.

21. The prosecution has examined P.W.3 - Balasaheb Kamble to prove the panchanamas Exhibit

17 and 18 about the two dead bodies. There is only one question put to this witness in the cross examination and he denied the suggestion that there were ligature marks on both the dead bodies.

22. Then prosecution has examined P.W.4 - Anis Khan to prove the panchanama regarding photographs handed over by the photographer to the police along with negatives. He identified the photographs and negatives (Exhibit 20). He proved the panchanma at Exhibit 21. The negatives are at Article 17 and positives are at Article 16.

23. In order to prove extra judicial confession of accused No.2, the prosecution examined P.W.7-Padu Jadhav. He has stated that he was the Sarpanch of village. He was knowing the accused and also knowing Raju and his uncle. On 9/2/2000 accused No.2 had been to his house and demanded water and consumed it. But the accused did not inform him anything. The witness declared hostile and was cross examined by the prosecution. In the cross examination, however, he has stated that the accused told him that he

was hungry from last 2 days and accused told him voluntarily that he invited Raju and his uncle for dinner and that Raju had kidnapped Sunita, he had defamed in the locality. Then accused further confessed that he and his better half committed murder of Raju and his uncle and their dead bodies were kept in steel and iron box respectively. He also admitted that he directed the accused not to leave the place.

24. In the cross examination only two questions were put to this witness and this witness admitted that accused No.2 gave his so called confession after arrival of police and not before. He also admitted that his statement under Section 162 of the Criminal Procedure Code was not read over to him. Both these questions in the cross examination do not create any doubt about the veracity of the witness. It has, therefore, to be held that the prosecution has succeeded in proving the extra judicial confession of accused No.2 in addition to other evidence.

25. Another important piece of evidence is the panchanama of the house of the accused from

where the dead bodies were recovered. This panchanama is proved by P.W.15-Sunil Patil. He has stated that on 9/2/2000 he was called by the police in the house of accused. There were two dead bodies in the said house and those were in Articles Nos. 1 and 2 before the court. He also identified the photographs of the house as "B" from Exhibit 20. He also identified the photographs of the dead bodies marked as R-1, U-1 and U-2. He proved the panchanama at Exhibit 41.

. In the cross examination only one question was asked and he has stated that he was not knowing at that time as to whom the house belonged. But he came to know about it subsequently.

26. Arrest panchanama of accused No.1 is at Exhibit 42. It is admitted in evidence and that of accused No.2 is at Exhibit 43. The clothes on the body of Raju were recovered under Exhibit 44. It is admitted in evidence. Certain recoveries were made at the instance of accused No.2. All the articles seized from the house of accused, including metallic box, steel container, gunny bag, scrappings, sleeved baniyan, jangya, full

pant etc. from 1 to 15 as per Exhibit 57, were analysed by the C.A.. He found human blood on all the 15 articles, but no grouping could be made. The blood group of both the accused could not also be determined.

27. Against all this evidence that the accused came to be convicted by the trial Court. The advocate for the accused, however, relied upon the judgment of the Supreme Court in the case of **Shankarlal Gyarasilal Dixit v/s State of Maharashtra** reported in **1981 SCC (Cri.) 315**. The facts in that case are :-

> "The appellant lives in a locality called Marwadipura in the town of Karanja, District Akola. His house is situated near a temple called Gopal Mandir, and a little beyond the temple is a public well. ;Ramrao Wagh, the father of the deceased Sunita, used to reside in a house near about the well.
>
> On December 10, 1976 at about 10.30 a.m. Sunita's mother, Renukabai, went to the well for fetching water. Sunita

accompanied her. Renukabai returned after a little while but Sunita, who was playing with some children, stayed back. She did not come home for quite some time and felling concerned, Renukabai went in search of her. Unable to find the girl, she went back to her house and told her neighbours, Shilabai Deo and Shobhabai Waghode, that Sunita was missing. The three ladies thereafter went in search of Sunita. Believing that she might be in the appellant's house, they knocked at his door repeatedly. The door was bolted from inside but there was no response from within. As the ladies were running out of their guesses and patience, a teacher called Shrinarayan Sharma, who lived in a house next to the appellant's, arrived on the scene. Sharma climbed over the roof of his house, entered the appellant's house through an open courtyard and opened the front door. The three ladies thereafter entered the house when, it is alleged, they saw the appellant sleeping on a cot in the courtyard, with a cover pulled up to his

face. Sunita was lying still and motionless in the bathroom, wrapped in a blanket. Renukabai lifted her dead child, threw the blanket and ran home. Sunita's underpant was missing.

Soon thereafter, Renukabai's husband Ramrao Wagh returned from the bazaar at about 12.45 p.m., and learned from her that Sunita's dead body was found in the appellant's house. Sunita had injuries on her person and her private parts were swollen. Ramrao went to the police station and informed the police of the mysterious death of his daughter. He returned to his house with the police and after about half an hour, he went again to the police station and lodged the first information report (Ex.11), on the basis of which offences were registered against the appellant under Sections 376 and 302 of the Penal Code.

P.S.I. Ramdas Katke gave directions for the arrest of the appellant, held an inquest on the dead body of Sunita, sent

> the dead body for post mortem examination and went to the appellant's house. From there, he seized a blood stained tile of the flooring of a room and a blood stained blanket which was lying in the bathroom. There was a cot in the courtyard of the house and under a pillow, which was lying on that cot, was found a child's underpant, That too was seized."

The Supreme Court narrated the following circumstances in para 12 upon which the prosecution had relied on :-

. (1) The dead body of Sunita was found in the house of the appellant;

. (2) The appellant was residing in the house all alone at the relevant time;

. (3) Renukabai (PW 2), Shilabai (PW 3) and Shobhabai knocked at the door of the appellant several times and though the door was bolted from inside, there was no response from within;

. (4) Shrinarayan Sharma (PW 5), a next-door neighbour, climbed over the roof of his house and seeing that the appellant was sleeping on a cot in the courtyard, he called out from him. On hearing the call, the appellant turned his side and said that he would not open the door;

. (5) Shrinarayan Sharma entered the appellant's house and opened the door whereupon Renukabai, Shilabai and Shobhabai went in. They saw the dead body of Sunita lying in a bathroom and the appellant sleeping on a cot in the courtyard of the house;

. (6) At the time when Sharma and the three ladies entered the house, no other person apart from the appellant was in the house;

. (7) In spite of the all-round commotion and the discovery of a dead body from his house, the appellant continued to lie unconcerned on the cot. He expressed no surprise, indeed no reaction at all; nor did he challenge or ask any of the four "intruder" as to why one of them entered his house from the roof and the others

rushed in to look out for something;

. (8) Sunita's underpant was later found under a pillow which was lying on the cot on which the appellant was sleeping;

. (9) A human blood-stain of B' group was found on the appellant's pant. Sunita's blood belonged to 'B' Group;

. (10) A stain of semen was found on the underpant of the appellant;

. (11) There was no smegma around the appellant's corona glandis; there was a small abrasion over the base of his glans-penis which had a bluish discolouration; and there was bruises over his left thigh; and

. (12) The plea of the appellant that he knew nothing of the crime and that he was involved falsely at the instance of his mother, brother and the neighbour Sharma is patently false.

. The Supreme Court, however, after minute

scrutiny of the evidence, allowed the appeal and set aside the conviction and acquitted the accused. The Supreme Court found following major defects in the prosecution case.

> "There are several reasons which make it impossible to believe that the appellant was in the house when Shrinarayan Sharma and the three ladies found the dead body of Sunita after entering the house. It is incredible that if Shrinarayan Sharma and the ladies saw the appellant in the house, they would not exchange a single word with him. The dead body was lying close by in a bathroom and any normal human being would have instinctively inquired of the appellant as to how it was that the dead body was lying in his house. None of the four persons who entered the appellant's house made any attempt whatsoever to elicit any information from him as to how Sunita came to be lying dead in the bathroom. It is alleged that everyone saw the appellant sleeping on a cot in the courtyard, but it is strange that none

talked to him at all.

One can understand the ladies not having the courage to talk to the appellant. But it is difficult to believe that Shrinarayan Sharma, a forty five year old school teacher, could also not dare so much as to ask the appellant, without making any accusation against him, as to how the dead body of the girl came to be in the bathroom. Shrinarayan Sharma has made a categorical admission in his evidence that he had no talk with the appellant at all. In fact, as stated earlier, the claim of Shrinarayan Sharma that he called out to the appellant and that the appellant said that he would not open the door, seems to us a clear improvement over what he narrated to the police immediately after the incident. He did not tell the police anything of the kind. When his attention was drawn to this significant omission, his explanation was that he could not say why the police did not record that part of his statement. We have no doubt that

> Shrinarayan Sharma did not tell the police during the course of his statement, which was recorded immediately after the incident, that he called out for the appellant and that the appellant stated that he would not open the door. This was far too important a happening which the witness would have failed to disclose to the police."

28. The advocate for the accused, therefore, contended that if the Supreme Court disbelieved the case because of the serious lacunas as stated above, then in the present case also the accused were entitled for benefit of reasonable doubt. We are not in agreement with the submissions made by the advocate for the accused for the following reasons :-

> (1) The prosecution has proved the motive of the accused in killing Raju and his uncle Pappu. It may be that there was no direct motive of killing uncle Pappu but since he accompanied Raju he met his unfortunate death;

(2) There is evidence of prosecution where in Raju before going to the house of accused disclosed to his two friends that he has been invited for dinner by the accused on 7/2/2000;

(3) P.W.11 Sitaram Pandit (Panwalla) has stated that he heard voice Bachav Bachav from the house of accused. Same voice was heard by other ladies passing by that road;

(4) The Police Patil Namdeo Patil (PW 2) on the next day learnt about the murder; he went to the house of accused; searched the house of the accused and found two dead bodies of Raju and his uncle Pappu.

(5) The dead bodies were identified by the photographs taken and no explanation from the accused as to how two dead bodies came in their house; that one dead body was kept in the iron box in the loft and another was kept in steel tank on the loft;

(6) The accused No.2 gave extra judicial confession in which there is nothing unnatural;

(7) Immediate arrest of the accused;

(8) Other circumstances discussed by us at length.

29. By way of repetition, We observe that there is absolutely no effective cross examination of any of the important or major witnesses. Nothing is brought on record to create doubt about their veracity, nor there is any motive for them to implicate the accused. In fact, as stated by the Supreme Court in the aforesaid judgment, motives to falsely implicate to be many but something has to be brought on record. And even if some suggestions were given to the police patil to have animus against the accused, his evidence of discovery of two dead bodies from the house of the accused cannot be doubted. Because two dead bodies cannot be planted by witness police patil. The subsequent panchanama of recovery of all the incriminating

articles, therefore, makes a case very strong and, therefore, this is not a case were any fault could be found with the judgment of the trial Court. In fact, this is a case where there is overwhelming evidence proving each of the link in the chain leading to the irresistible conclusion and the only conclusion that both Raju and his uncle Pappu were killed and murdered by both the accused and both the accused alone and none-else. Therefore, there is no merit in these appeals. Hence we pass the following order :-

:ORDER:

Both the Appeals filed by Accused Nos.1 and 2 are dismissed.

Conviction and sentence of both the accused is maintained.

Civil Application No.2244 of 2005 in Criminal Appeal No.362 of 2005 is disposed of.

Office to communicate this order to both the accused in jail immediately.

[SMT.R.S.DALVI, J] [D.G.DESHPANDE,J]